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FEDERAL ELECTION COMMISSION
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FIRST GENERAL COUNSEL'S REPORT

CELA

RAD REFERRAL 15L-05
DATE RECEIVED: March 24, 2015
LAST RESPONSE RECEIVED: N/A
DATE ACTIVATED: May 7, 2015

EXPIRATION OF SOL: April 15, 2019
ELECTION CYCLE: 2014

SOURCE: Internally Generated

RESPONDENTS: Espaillat for Congress and Rafael Lantigua in his official capacity as treasurer

RELEVANT STATUTES AND REGULATIONS: 52 U.S.C. § 30116(a)¹
52 U.S.C. § 30116(f)
11 C.F.R. § 102.9(e)
11 C.F.R. § 110.1(b)
11 C.F.R. § 110.1(j)
11 C.F.R. § 110.2(b)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Reports Analysis Division ("RAD") referred the principal campaign committee of Adriano Espaillat for Congress and Rafael Lantigua in his official capacity as treasurer (the "Committee"), to the Office of General Counsel ("OGC") because the Committee failed to timely refund \$15,790 in excessive primary election contributions and \$22,550 in impermissible general election contributions.²

¹ On September 2, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act"), was transferred from Title 2 to new Title 52 of the United States Code.

² Pursuant to Standard 5 of the "RAD Review and Referral Procedures for Authorized Committees," RAD only refers contributions that were not remedied within days from the date of the applicable Request for Additional Information letter ("RFAL").

1 As discussed below, we recommend that the Commission find reason to believe that the
 2 Committee violated 52 U.S.C. § 30116(f) and authorize pre-probable cause conciliation.

3 **II. FACTS**

4 Adriano Espaillat was a candidate in the 2014 primary election for the 13th
 5 Congressional District of New York. He lost the primary on June 24, 2014; thus, he did not
 6 participate in the general election.

7 The Committee's 2014 April Quarterly and 12-Day Pre-Primary Reports show that six
 8 individuals made excessive primary election contributions:

2014 PRIMARY ELECTION CONTRIBUTIONS				
CONTRIBUTOR	DATE	AMOUNT	EXCESSIVE	REFUNDED LATE
Beach, Dennie	3/13/14	\$ 250	\$590	\$590
	3/29/14	\$1,000		
	3/30/14	\$ 500		
	3/31/14	\$ 250		
	4/28/14	\$ 250		
	6/4/14	\$ 940		
Fuentes, Rodolfo	7/27/13	\$1,500	\$2,500	\$2,500
	9/9/13	\$1,000		
	3/31/14	\$2,600		
Gagliardi, Paul	12/31/13	\$2,500	\$2,500	\$2,500
	3/31/14	\$2,000		
	6/3/14	\$ 600		
Kabessa, Avik	6/30/13	\$1,500	\$5,100	\$2,500
	9/30/13	\$1,000		
	2/21/14	\$1,000		
	3/8/14	\$1,000		
	3/31/14	\$ 600		
	3/31/14	\$2,600		
Levy Nelson, Anita	3/30/14	\$2,600	\$2,600	\$2,600
	3/30/14	\$2,600		
Zaleski, Michel	6/27/13	\$2,500	\$2,500	N/A
	5/16/14	\$2,600		
TOTALS			\$15,790	\$10,690

1 The same reports show that the Committee accepted \$22,550 in contributions designated
2 for the general election that were not timely refunded:

2014 GENERAL ELECTION CONTRIBUTIONS				
CONTRIBUTOR	DATE	AMOUNT	EXCESSIVE	REFUNDED LATE
Amanollahi, Sm- Ali	3/31/14	\$2,600	\$2,600	N/A
Beach, Dennie	6/4/14	\$ 350	\$ 350	\$350
Boykin Curry, Ravenel IV	2/21/14	\$2,600	\$2,600	N/A
Cardenas, Angel	6/4/14	\$ 100	\$ 100	N/A
Friedman, William S.	5/12/14	\$ 500	\$ 500	\$500
Gagliardi, Paul	6/3/14	\$2,600	\$2,600	\$600
Kemble, Cecilia	3/3/14	\$2,600	\$2,600	N/A
Moronta, Cirilo	2/3/14	\$1,400	\$1,400	\$1,400
Oleaga, Dario A.	3/14/14	\$2,400	\$2,400	N/A
Rechnitz, Jona S.	5/29/14	\$2,400	\$2,400	N/A
Spitzer, Bernard	5/13/14	\$2,600	\$2,600	N/A
Spitzer, Eliot	6/4/14	\$2,400	\$2,400	N/A
TOTALS			\$22,550	\$2,850

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4 On June 20, 2014, RAD sent the Committee an RFAI concerning its 2014 April Quarterly
5 Report noting, among other items, that the Committee appeared to have accepted excessive
6 contributions. See RAD Referral at 2. In a July 25 amended April Quarterly Report, the
7 Committee corrected certain misreported contribution entries, reducing by \$3,900 the amount of
8 excessive contributions identified by RAD. See *id.* Further amendments on July 29 and
9 December 10 did not disclose any refunds of the excessive contributions. *Id.*

10 On June 27, 2014, RAD sent the Committee an RFAI concerning its 12-Day Pre-Primary
11 Report, noting, among other items, that the Committee appeared to have accepted additional
12 excessive contributions. See *id.* at 2-3. On August 1, the Committee filed an Amended 2014
13 12-Day Pre-Primary Report that disclosed corrections reducing by \$7,150 the amount of

1 excessive contributions identified in the RFAI. *See* RAD Referral at 3. The Committee filed
2 additional amended Pre-Primary reports on July 28 and December 10, but they did not reflect
3 any refunds.

4 In a November 19, 2014, Miscellaneous Report, the Committee stated that it had
5 refunded some general election contributions, and would give priority to refunding more such
6 contributions because the candidate did not participate in that election. *See* Miscellaneous
7 Report to FEC (Nov. 19, 2014). The Committee also explained that it would be holding "debt-
8 retirement" fundraisers at the candidate's home and other fundraising activities to make further
9 refunds. *See* Miscellaneous Report to FEC (Dec. 10, 2014).³ On May 28, 2015, the Committee
10 disclosed making four additional refunds. *See* Letter to CELA (May 28, 2015).

11 Meanwhile, OGC notified the Committee of the Referral on March 31, 2015. *See* Letter
12 to Rafael Lantigua, Treasurer of the Committee (Mar. 31, 2015); *see also* *Agency Procedure for*
13 *Notice to Respondents in Non-Complaint Generated Matters*, 74 Fed. Reg. 38,617 (Aug. 4,
14 2009). Other than notifying the Commission about the May 28 refunds, the Committee has not
15 responded to the notice.

16 III. LEGAL ANALYSIS

17 Under the Act, an individual may not make a contribution to a candidate with respect to
18 any election in excess of the legal limit, which was \$2,600 per election during the 2014 election
19 cycle.⁴ A primary election and a general election are each considered a separate "election" under

³ The Committee also had numerous phone conversations with RAD. *See* RAD Referral, Attach. 4 (Communications Log).

⁴ *See* 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b)(1).

1 the Act, and the contribution limits are applied separately with respect to each election.⁵
2 Candidates and political committees are prohibited from knowingly accepting excessive
3 contributions.⁶

4 The Commission's regulations permit a candidate's committee to receive contributions
5 for the general election prior to the primary election.⁷ If, however, the candidate does not
6 become a candidate in the general election, the committee must: (1) refund the contributions
7 designated for the general election; (2) redesignate such contributions in accordance with
8 11 C.F.R. §§ 110.1(b)(5) or 110.2(b)(5); or (3) reattribute such contributions in accordance with
9 11 C.F.R. § 110.1(k)(3).⁸ The committee must do so within 60 days of the date that the
10 committee has actual notice of the need to redesignate, reattribute, or refund the contributions,
11 such as the date the candidate loses the primary or withdraws from the campaign.⁹

12 Redesignation of general election contributions may only occur to the extent that the
13 amount redesignated does not exceed the contributor's contribution limit for the primary and the

⁵ See 52 U.S.C. §§ 30101(1)(A) and 30116(a)(6); 11 C.F.R. §§ 100.2 and 110.1(j).

⁶ See 52 U.S.C. § 30116(f).

⁷ See 11 C.F.R. § 102.9(e)(1). The committee must use an acceptable accounting method to distinguish between primary and general election contributions. *Id.* The committee's records must demonstrate that prior to the primary election, the committee's recorded cash on hand was at all times equal to or in excess of the sum of general election contributions received less the sum of general election disbursements made. See 11 C.F.R. § 102.9(e)(2).

⁸ See 11 C.F.R. § 102.9(e)(3). See also Advisory Op. 1992-15 (Russo for Congress Committee) at 2 ("Nonetheless, the Commission concludes that for losing primary candidates, like Mr. Russo, who receive contributions before the primary election that are designated for the general election, redesignations within 60 days of the primary election date would be permissible."); Advisory Op. 2007-03 (Obama for America) at 3 ("If a candidate fails to qualify for the general election, any contributions designated for the general election that have been received from contributors who have already reached their contribution limit for the primary election would exceed FECA's contribution limits.").

⁹ See Advisory Op. 2008-04 (Dodd); Advisory Op. 1992-15 (Russo).

1 amounts redesignated do not exceed the net debts outstanding from the primary.¹⁰ Likewise,
2 reattribution of a general election contribution may only occur to the extent that such attribution
3 does not exceed the contributor's contribution limits.¹¹

4 In this matter, the Committee accepted \$15,790 in excessive primary election
5 contributions that it failed to timely refund, reattribute, or redesignate. *See* 11 C.F.R. § 110.1(b)
6 and (k). The Committee also accepted contributions totaling \$22,550 that were designated for
7 the 2014 general election but were not refunded within 60 days after the candidate's June 24,
8 2014, loss in the primary. *See* 11 C.F.R. § 102.9(e)(3). The Committee could not redesignate or
9 reattribute any of these excessive contributions because the contributors had already contributed
10 \$2,600 toward the primary election, the maximum allowable contribution.

11 Based on the foregoing, we recommend that the Commission find reason to believe that
12 Espaillat for Congress and Rafael Lantigua in his official capacity as treasurer violated 52 U.S.C.
13 § 30116(f) by knowingly accepting excessive contributions.

¹⁰ *See* 11 C.F.R. §§ 110.1(b)(5)(iii) and (b)(3)(i), 110.2(b)(5)(iii) and (b)(3)(i); *see also* AO 1992-15 (Russo) at 2. A committee's net debts outstanding are calculated, in relevant part, based on the total amount of debts and obligations incurred for an election, less the total cash on hand available, and any amounts owed to the committee. 11 C.F.R. § 110.1(b)(3)(ii).

¹¹ *See* 11 C.F.R. § 110.1(k)(3)(ii)(B)(1); *see also* AO 2007-03 (Obama) at 3.

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11 **V. RECOMMENDATIONS**

12 1. Open a MUR.

13 2. Find reason to believe that Espaillat for Congress and Rafael Lantigua in his
14 official capacity as treasurer violated 52 U.S.C. § 30116(f).

15 3. Approve the attached Factual and Legal Analysis.

16 4. Enter into conciliation with Espaillat for Congress and Rafael Lantigua in his
17 official capacity as treasurer prior to a finding of probable cause to believe.

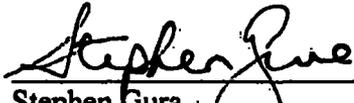
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- 5.
- 6. Approve the appropriate letter.

6.24.15

Date

Daniel A. Petalas
Associate General Counsel
for Enforcement



BY: Stephen Gura
Deputy Associate General Counsel



William Powers
Assistant General Counsel



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